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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

RONNIE EARL HOWELL,

Defendant and Appellant.

F062341

(Fresno Sup. Ct. No. F10904409)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Jon N. Kapetan, Judge.

Paul Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and R. Todd Marshall, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Appellant/defendant Ronnie Earl Howell (defendant) was charged with several offenses after he ran through a stop sign, attempted to evade a police officer, and was determined to be intoxicated. During the course of the criminal proceedings, he repeatedly made motions pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) and asserted that he could not be represented by any court-appointed attorney because each such attorney was employed by a office that was involved in a conspiracy to take away his child in a dependency case. The court eventually suspended criminal proceedings and declared a doubt about his competency pursuant to Penal Code¹ section 1368. The court reviewed two expert reports, which concluded that defendant was incompetent to stand trial because he was unable to cooperate with his defense attorney based on his delusions about every defense counsel's purported involvement in the alleged dependency conspiracy. The court ordered defendant committed to Atascadero State Hospital.

On appeal, defendant contends there is insufficient evidence to support the court's initial decision to suspend proceedings because it was solely based on defense counsel's declaration that defendant was not competent. Defendant also challenges the sufficiency of the evidence as to the court's finding that he was not competent.

While this appeal was pending, we asked the parties to update this court regarding defendant's status. The parties advised this court that defendant had been restored to competency, he was in county jail, and criminal proceedings were reinstated. The People request this court to dismiss the instant appeal as moot. Defendant asserts this court should still address the issues he originally raised in his brief. We decline defendant's invitation and will dismiss the instant appeal.

¹ All further statutory citations are to the Penal Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

At 12:45 a.m. on August 26, 2010, Fresno Police Officer Sean Cowart was on patrol in a marked squad car.² He saw a vehicle driving erratically through the neighborhood. The vehicle, which was driven by defendant, was going too fast for Cowart to catch up. Defendant pulled the car into an apartment complex. Officer Cowart parked on the street and waited to see if the vehicle would reappear. After a few minutes, the defendant drove out of the parking lot and went through a stop sign. Officer Cowart activated the patrol car's flashing lights and siren and attempted to perform a traffic stop. Defendant kept driving and continued to run stop signs. Defendant eventually stopped his car, and Cowart ordered him out of the vehicle.

Defendant identified himself and said he was on parole. His driver's license was suspended. He also smelled of alcohol and had bloodshot and watery eyes.

Defendant was placed in handcuffs and seated in the back of the patrol car. Defendant kicked the window and complained his handcuffs were too tight. Defendant said he was on "psych" medication.

Defendant failed field sobriety tests, and officers advised him that he was under arrest for driving under the influence. Defendant refused to submit to a chemical test, and he was transported to the police department for a blood test. During the drive, he again kicked the back windows of the patrol car. At the police department, defendant repeatedly refused to cooperate for a blood test. The officers had to handcuff and restrain him to a chair to obtain the blood sample. Defendant's blood-alcohol level was 0.16 percent.

The complaint

On August 27, 2010, a complaint was filed in the Superior Court of Fresno County case No. F10904409, charging defendant with count I, driving with a blood-alcohol level

² The following facts are from the preliminary hearing.

of 0.08 percent or more (Veh. Code, § 23152, subd. (b)), count II, driving under the influence (Veh. Code, § 23152, subd. (a)); count III, misdemeanor evading an officer (Veh. Code, § 2800.1, subd. (a)); and count IV, misdemeanor driving with a suspended license (Veh. Code, § 14601.2, subd. (a)). As to count I, it was alleged that defendant had a blood-alcohol level of 0.15 percent or higher (Veh. Code, § 23578). As to counts I and II, it was alleged that he had one prior conviction for driving with a blood-alcohol level of 0.08 percent or higher (Veh. Code, § 23550.5, subd. (a)). It was also alleged that he had served five prior prison terms (§ 667.5, subd. (b)).

Initial Marsden motions

On August 30, 2010, defendant appeared for arraignment before Judge Jon N. Kapetan and objected to the appointment of the public defender's office, John Barker & Associates, the Alternate Defender's Office (ADO), and Ciummo & Associates. Defendant claimed he had conflicts of interests with all these offices because of prior criminal cases. The court appointed the deputy public defender, who said that he would determine whether his office could represent defendant or had to declare a conflict. Defendant said that he would provide documents to prove the alleged conflict of interest. The court asked defendant who he wanted to be represented by. Defendant asked for the court to appoint independent counsel, "maybe John Smur[r]." The court explained that Mr. Smurr was no longer practicing law. Defendant pleaded not guilty and denied the enhancements.

On September 21, 2010, defendant again appeared before Judge Kapetan, and requested a *Marsden* hearing as to Ms. Girard, his deputy public defender. At the *Marsden* hearing, defendant said he had a conflict with the entire public defender's office because it represented him in a prior DUI case. Defendant further stated that if the court granted his motion, he would object to an attorney from either "John Barker, ADO, Ciummo and Associates representation due to conflict also."

Defendant launched into a lengthy statement that his children were involved in a dependency case, he was initially represented by the public defender, the public defender also represented the children's mother, Barker & Associates represented him in a criminal case and made him plead guilty, Barker also represented the children's mother, and he lost custody because of his guilty pleas.

Ms. Girard stated that defendant refused to speak to her investigator and said he would not cooperate with anyone from the public defender's office. Defendant interrupted and said the dependency case was still active. He also claimed to have made a successful *Marsden* motion against another public defender in another criminal case. He further claimed that "Catherine Hart" represented him in a criminal case, and claimed she worked for the public defender's office "and used to be a Fresno Superior Court Judge." Defendant said he asked Ms. Girard's investigator to investigate the conflict of interest with his dependency case. Defendant added that the public defender was representing "my son that is in the Fresno County Jail."

The court denied defendant's *Marsden* motion and found he was manipulating the system, trying to set up an appeal, and his attitude was the sole cause of any deterioration in the relationship with his attorney.³

³ In 2009, this court declared defendant a vexatious litigant based on numerous meritless motions, appeals, and petitions he filed in a dependency case involving his child and the child's mother. (*In re R.H.* (2009) 170 Cal.App.4th 678, 683.) "Over the years, [defendant] in propria persona has filed numerous notices of appeal and writ petitions in this court relating to his son's dependency. Of the decisions which are final, [defendant] has not prevailed in a single appeal or writ proceeding. More specifically, in the preceding seven years and essentially since the child was placed in long-term foster care [citation], [defendant] in propria persona has commenced at least 13 appeals or writ proceedings that have been finally determined adversely to him. [Citation.] [¶] The untold hours this court has expended in response to [defendant's] voluminous as well as meritless appeals and writs, not to mention the costs of record preparation and court-appointed appellate counsel, has led us to conclude [defendant] is a vexatious litigant ... and should be subject to a prefiling order [citation]." (*In re R.H.*, *supra*, 170 Cal.App.4th 678, 683.)

On October 1, 2010, Judge Kapetan convened the preliminary hearing. Defendant appeared with Ms. Harbottle, his deputy public defender, and made another *Marsden* motion. Defendant complained he had several tactical disagreements with Ms. Harbottle. Ms. Harbottle stated that she had discussed the case with defendant and he failed to explain his objections or desired tactics. The court denied defendant's *Marsden* motion. The court conducted the preliminary hearing and held defendant to answer.

The information was subsequently filed which charged defendant with the same four counts as the complaint, but included eight prior prison term enhancements.

Defendant's successive *Marsden* motions

On October 15, 2010, defendant appeared before Judge Kapetan for arraignment on the information. The deputy public defender attempted to set various court dates.

This court further explained: "The hallmark of [defendant's] appeals and writ petitions over the last seven years has been his obsessive attempts at groundless claims which have the effect of clogging the appellate system. [Citation.] His appeals and writ petitions focus on [defendant's] self-interests as a litigant, not his interests as a parent let alone the child's interests. In not one of the 13 unsuccessful appeals or writ petitions [defendant] has filed in the preceding seven years has he raised an issue regarding the merits of the child's continued dependency status: that is, the continuing necessity for the child's out-of-home placement; and the lack of any progress by either parent toward alleviating and mitigating the causes of the child's removal. While [defendant] has twice argued in favor of visitation, the appellate records have been devoid of *any* evidence either contradicting the showing made in favor of terminating visits or supporting modification of the 2001 order terminating visits. Thus, we conclude application of the vexatious litigant law to [defendant] under these circumstances is not inconsistent with the purpose of juvenile dependency law. [Citation.]" (*In re R.H.*, *supra*, 170 Cal.App.4th at p. 698, italics in original.)

While this court declared defendant a vexatious litigant, we noted that he still had the benefit of "court-appointed trial counsel who not only can advise him regarding whether he may have an arguable issue to appeal but can file the notice of appeal and bypass the prefiling order requirement altogether. While [defendant] claims his attorney will not communicate with him, we are not so persuaded. The record supports a conclusion rather that it is [defendant] who does not care to listen to what his trial attorney has to say." (*In re R.H.*, *supra*, 170 Cal.App.4th at pp. 700-701.)

Defendant repeatedly interrupted. The court asked him to remain quiet. Defendant again interrupted and objected to his deputy public defender. The court ordered him removed:

“For the record, the Court has admonished [defendant] on several different occasions regarding his outburst in court, and the Court is going to have him taken out of the courtroom due to those outbursts.”

After a brief recess, the court resumed the hearing with defendant present. The court admonished defendant that he would be removed unless he was willing to conduct himself with decorum. Defendant pleaded not guilty and declared the prior convictions were “unconstitutional due to they have been used over multiple times against me.”

On November 18, 2010, Judge Kapetan convened the trial confirmation hearing. Defendant made another *Marsden* motion as to his deputy public defender, Ms. Boulger. Defendant made a lengthy and rambling statement in which he repeated his prior *Marsden* complaints: that he had a conflict of interest with the entire public defender’s office based on prior criminal cases; he was charged with assaulting the mother of his children, and that woman was also represented by the public defender’s office; the public defender’s office was involved in his ongoing dependency matter, and he made successful *Marsden* motions against the public defender’s office in those cases. Defendant also complained that his attorney had failed to file any motions to challenge his prior convictions.

Ms. Boulger stated that defendant had prepared his own motion to challenge his prior convictions, she refused to file his motion under her name, and she would research and prepare her own motion.

The court found there was no breakdown in the relationship between defendant and his attorney, Ms. Boulger was competently representing him, and that defendant was “setting up an appeal. It is the exact same argument each and every time.”

Thereafter, the court resumed the hearing and granted Ms. Boulger's motion for a continuance. As the court called a recess and stepped off the bench, defendant "hollered out for a *Faretta* motion."⁴ The court continued the matter.

On November 19, 2010, defendant withdrew his *Faretta* request.

Defendant's motion to dismiss the prior convictions

On December 10, 2010, the deputy public defender filed an extensive motion to dismiss defendant's multiple prior conviction allegations because of alleged constitutional violations when defendant entered his pleas in those cases.

On December 13, 2010, the prosecution filed opposition and argued defendant had raised noncognizable collateral attacks on the prior convictions.

On December 16, 2010, the court heard and denied defendant's motion to dismiss the prior conviction allegations.

Further motions

On January 6, 2011, Judge Kapetan convened the continued trial confirmation hearing. Defendant said he was going to file a *Marsden* motion to dismiss his deputy public defender because the court had denied his motion to dismiss on a "technicality."

On January 10, 2011, defendant filed a written motion to dismiss the instant criminal case, based entirely on the alleged proceedings in the dependency case. Defendant asserted he was the nonoffending parent in the dependency matter; he was represented by Ciummo & Associates in that matter; and his attorney had submitted the matter without showing defendant the petition.

The court grants defendant's *Marsden* motion

On January 20, 2011, Judge Nunez conducted a hearing on defendant's *Marsden* motion. Defendant again complained there was a conflict with the public defender's office because it also represented the mother of his children in other criminal and

⁴ *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*)

dependency cases. The court asked Ms. Boulger, the deputy public defender, if there were “some kind of walls” in such situations. Ms. Boulger said there were such separations between the criminal and dependency divisions of the public defender’s office, and the current case had nothing to do with defendant’s prior cases or the dependency matter. She also said that defendant was so concerned with “past injustices that we can’t seem to focus on the current case. And that’s frankly what I’m worried about, because he’s got eight prison priors” She had tried to settle the case but defendant refused. Defendant was “so convinced that any public defender or anybody that’s ever been a public defender doesn’t care about him, and I can’t convince him otherwise.”

The court advised defendant there was a “wall of separation” in the public defender’s office between criminal and dependency matters. Defendant launched into a lengthy account of his “active” dependency matter with the children’s mother, the public defender represented both of them, and the mother was also represented by Barker & Associates.

The court thought defendant was “fixated” on the idea that it was improper to work with the public defender. Ms. Boulger agreed that defendant’s fixation was on the entire public defender’s office and not just about her.

The court decided to grant defendant’s *Marsden* motion as to the public defender’s office:

“I’m convinced, sir, that in your mind the Public Defender’s Office cannot represent you, it’s improper, and I think no matter what I say or do or the Public Defender’s Office says or does, you’re just not going to be able to work with them, sir. So I’m going to find that there’s, in fact, a conflict, sir.”

The court relieved the public defender’s office and appointed an attorney from Ciummo & Associates. Defendant objected because “Ciummo purchased Barker,” and he also had complaints against Barker. The court then decided to appoint an attorney

from the ADO. Defendant objected to the ADO and claimed he had filed successful *Marsden* motions against attorneys from both Barker and the ADO, and “they got me to plead guilty to the battery” that led to the dependency ruling which removed his children.

The court explained that the ADO was not an office or a firm, but composed of different attorneys from different offices, and defendant could not file a *Marsden* motion against the ADO itself. Defendant again claimed he had “*Marsdened*” the entire ADO during the dependency case in 2000. The court again tried to explain the difference. Defendant said that if the court appointed an attorney from the ADO, then he would file another *Marsden* motion. Defendant also intended to sue all the attorneys who were involved in the dependency case.

The court appointed Bonnie Bitter from the ADO, given defendant’s inability to recall if she had been involved in his prior criminal or dependency cases. However, defendant said he would file a *Marsden* motion against the entire ADO and Barker & Associates. The court again explained that Barker was not involved in the case.

Defendant’s *Marsden* motion against the ADO

On January 24, 2011, defendant appeared before Judge Kapetan with Ms. Bitter from the ADO. Defendant made a *Marsden* motion against the entire ADO and claimed the ADO represented the mother of his children during the prior dependency case. The court asked defendant to state specific complaints about Ms. Bitter. Defendant ignored the court’s statement, continued to recount the ADO’s alleged involvement in the dependency case and claimed the ADO, Barker, and Ciummo withheld evidence and committed “perjury.”

Ms. Bitter stated that an attorney from the ADO represented defendant in 2000 during the dependency case; that attorney was relieved the same year, and no one from the ADO represented anyone else in the case. Defendant interrupted and said he made a *Marsden* motion against an ADO attorney for withholding evidence, and the attorney worked with a judge to have his children removed.

The court noted that it had heard several of defendant's *Marsden* motions in this case, and that he had raised "exactly the same things at every *Marsden* Hearing." The court denied the *Marsden* motion and found defendant failed to show any reason why Ms. Bitter could not competently represent him.

On January 31, 2011, defendant appeared before Judge Hoff with Amy Guerra of the ADO. Defendant again complained he had a conflict with the ADO and asked for the office to be relieved. The court replied that issue had already been heard and denied. Defendant offered another lengthy statement about his prior dependency case in 2000, and complained he was represented by the ADO and lost custody. The court denied defendant's motion to relieve the ADO without prejudice. The court advised defendant that he needed to file a written motion as to his alleged conflict with the ADO.

Competency proceedings

On February 17, 2011, Judge Kapetan convened the continued trial confirmation hearing. Defendant appeared with Ms. Guerra of the ADO. The prosecution stated its intent to file an amended information. Ms. Guerra advised the court:

"MS. GUERRA: At this time, after the last jail visit, I have to express doubts as to [defendant's] competency. I would ask the Court to appoint a doctor to assess him pursuant to [section] 1368.

"THE DEFENDANT: I'll be objecting to that, Your Honor.

"MS. GUERRA: As an officer of the court, I'm making that statement.

"THE COURT: Making the statement as to what? You're expressing a doubt as to his competency?

"Ms. GUERRA: Yes, Your Honor, based on our last jail visit.

"THE DEFENDANT: I'll be objecting to that."

The court suspended criminal proceedings and appointed two experts to examine defendant. Defendant immediately made another *Marsden* motion.

The court then conducted a *Marsden* hearing. Defendant again objected to the entire ADO because of alleged conflicts from his prior criminal and dependency cases. Defendant also claimed that Judge Nunez, who had appointed an attorney from the ADO to represent him in this case, had ruled against him and in favor of the children's mother during the dependency case. Defendant launched into another lengthy account about his complaints against the public defender's office, Barker & Associates, Ciummo & Associates, and the ADO, claimed he had successfully made *Marsden* motions against all those offices, and that his dependency case was still pending. Defendant declared there was a major conflict of interest "that has still been carried out in order to try to secure the possession of my kids through the Fresno County Superior state dependency proceeds [sic]" by having him committed.

Ms. Guerra stated her office had checked for conflicts and had not found anything to prevent her from representing defendant. The court denied defendant's *Marsden* motion because it had "heard nothing, again."

The experts' reports

Dr. Robert C. Taylor, Ph.D., a clinical psychologist, examined defendant on March 4, 2011, at the county jail. Defendant made numerous confusing and rambling remarks about the dependency case. He declared that attorneys from both Ciummo and the ADO had engaged in dual representation of the children's mother and himself, that he was previously sent to prison because of this conflict, and that imprisonment was used against him in the dependency case.

Defendant said he drank every day because he was " 'wrapped up' " in the dependency case. Defendant stated that he might have heard internal voices in 2007, which told him to " 'do violence to someone.' " Defendant had the paranoid ideation that the people involved in his dependency case were trying to harm or hurt him. Defendant's responses during the competency evaluation "were often interrupted by digressions into long-winded and rambling explanations of some dependency case he has been or is

involved with.” He claimed to have been receiving psychiatric or psychological treatment since 2002, when he discovered “ ‘a major conflict of interest’ ” during his dependency case about “ ‘how they got me in prison,’ ” and he lost custody.

Dr. Taylor reported that defendant had a county mental health history dating back to 1992. Defendant said he was committed to Atascadero State Hospital pursuant to section 1368 in May 2007. In August 2007, a psychiatrist’s follow-up note described defendant as “ ‘somewhat delusional,’ ” with a differential diagnosis between schizophrenia, paranoid type, and delusional disorder. In April 2008, a psychiatric assessment diagnosed defendant with delusional disorder upon his discharge from Atascadero. In July 2008, he was diagnosed with major depressive disorder with psychotic features. According to a February 2011 progress note, he had complied with all his medication requirements, but he continued to talk about his legal issues, and his speech was rambling.

Dr. Taylor found that defendant was able to understand the nature of the criminal proceedings, but “**his disorganized thought processes make him NOT able to assist counsel in the conduct of his defense in a rational manner,**” and recommended the court find defendant incompetent to stand trial. (Emphasis in original.) Defendant displayed “disordered thinking” and his “frequent tangential comments about the dependency case along with his odd, rambling account of why his attorney would not adequately represent him were prime examples of the disjointed quality of his thinking.” Defendant was hospitalized in 2008 at Atascadero State Hospital and received a diagnosis of delusional disorder upon discharge.

Dr. Taylor concluded:

“[Defendant is] borderline incompetent to stand trial, his tangential thought processes causing significant interference in his ability to focus and concentrate and understand the role of his attorney. His delusional thought processes about his attorney having a conflict of interest representing him because of the firm allegedly being involved in his dependency case would

seriously undermine his ability to function rationally with counsel.... His thought disorganization would impair his ability to assist his attorney in [a] rational manner in the conduct of his defense.”

Dr. Taylor conceded that defendant’s knowledge of the legal proceedings was basically intact. However, he believed “[a] brief hospitalization, during which [defendant] can be skillfully treated with appropriate psychotropic medications, can be expected to stabilize his functioning and restore his trial competency. Once stabilized he will need to remain on psychotropic medication in order to maintain trial competency or risk another regression.”

Dr. Harold L. Seymour, Ph.D., a clinical psychologist, evaluated defendant on March 3, 2011. Dr. Seymour found the dependency matter was defendant’s “central obsession.” Defendant was unable “to disengage from his well-developed paranoid delusional system” about the ADO and its alleged involvement in his dependency case. Defendant provided “extended and detailed summaries of all manner of assumed connections between attorneys, judges, police, etc., all designed to thwart him.” “No matter what topic or question was presented to [defendant], he always managed to connect it back to the Dependency Court case. In many instances, he would be reciting his delusions and he would not even hear the question or the attempt at interruption.”

Dr. Seymour found that defendant had sufficient intelligence and knowledge to be competent, but he was “clearly too delusional and disconnected from reality to be able to competently assist his legal counsel at this time.” Defendant’s thought processes were tangential, with “well-developed paranoid and persecutory delusions.” His insight and judgment were both impaired.

Dr. Seymour concluded that defendant was not competent:

“... [Defendant] presents with a fixed persecutory delusional system that was identified some years ago. He has in the past been treated with antipsychotic medication, but he is not prescribed this at this time.

“He currently presents as too impaired to competently assist his legal counsel in preparing a defense against the criminal charges. He was not

even able to maintain an appropriate focus for this evaluation. He would not be able to maintain his focus during an actual criminal trial.

“Delusions are notoriously difficult to treat, but sometimes a combination of antidepressant and antipsychotic medication can be effective. This appears to be how [defendant] was treated in the past, and this may be needed once again to help restore him to competency.”

The court's ruling

On March 17, 2011, Judge Kapetan received and reviewed the experts' reports. The prosecutor and defense counsel submitted the matter on the reports. The court found defendant was not competent to stand trial.

On April 1, 2011, Judge Kapetan obtained defendant's voluntary consent to the administration of antipsychotic medications, and ordered defendant committed to Atascadero State Hospital. Defendant objected to the commitment for the record.

On April 6, 2011, defendant filed a timely notice of appeal from the court's order of April 1, 2011.

DISCUSSION

THE ISSUES RAISED IN THIS APPEAL ARE MOOT

This court asked the parties for further briefing as to defendant's current status. The parties agree that defendant has been restored to competency and returned to county jail, and his criminal trial has resumed. They disagree about the impact of that information. The People request this court to dismiss the instant appeal as moot. Defendant asserts that this court should address his appellate issues because they are capable of repetition and he could again be found incompetent. We decline defendant's invitation for the following reasons.

A. Briefing order

On April 26, 2012, while the instant appeal was pending, this court requested the parties to report on the current status of criminal proceedings in case No. F10904409, and to provide appropriate documentation. This court further requested the parties to address

the question of whether this appeal should be dismissed as moot if defendant has been restored to competency, and criminal proceedings have resumed in case No. F10904409.

B. Current status of the case

In response, this court has received copies of minute orders from case No. F10904409, which reflect the following information.

On March 9, 2012, defendant and his attorney appeared before Judge Kapetan. Defendant was in custody at the county jail. The court reinstated criminal proceedings. It also issued an ongoing order for the jail to continue to give defendant all prescribed medications.

On March 26, 2012, defendant and his attorney again appeared before Judge Kapetan. The People filed the first amended information, and defendant pleaded not guilty and denied all special allegations. The court granted defense counsel's motion for a continuance in order to prepare a suppression motion pursuant to section 1538.5. Defendant entered a general time waiver, and the court set the next hearing for April 19, 2012. Defendant remained in custody.

On April 19, 2012, defendant again appeared in court and entered a general time waiver. The court set a tentative jury trial date for July 9, 2012.

C. The parties' arguments

Based on these minute orders, the People assert that the instant appeal should be dismissed as moot because defendant has been restored to competency.

Defendant has not challenged the veracity of the information contained in the minute orders.⁵ However, appellate counsel has submitted a declaration about conversations he had with defendant's prior and current defense attorneys about defendant's status. Both defense attorneys concurred that defendant had been returned to

⁵ Upon this court's own motion, we take judicial notice of the above-described minute orders in Fresno County Superior Court case No. F10904409. (Cal. Rules of Court, rules 8.155, 8.54(c).)

court and criminal proceedings were reinstated. However, they stated defendant was not doing well, he was not getting his required medication, and his current defense attorney was considering whether to declare a doubt as to his competency. However, there is no evidence before this court that criminal proceedings have again been suspended.

Based on this declaration, defendant argues that this appeal should not be dismissed as moot because there is a reasonable expectation that he will be declared incompetent again, the same issues will recur, and dismissal would thwart appellate review of his case.

D. Analysis

The question before this court is whether the instant appeal should be dismissed as moot. “As a general rule, an appellate court only decides actual controversies. It is not the function of the appellate court to render opinions ‘ ‘ ‘ ‘upon moot questions or abstract propositions, or ... declare principles or rules of law which cannot affect the matter in issue in the case before it.” ’ ’ ’ [Citation.] ‘[A] case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief. [Citation.]’ [Citation.]” (*People v. Rish* (2008) 163 Cal.App.4th 1370, 1380.) Thus, “ ‘[a]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.’ [Citation.]” (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404; *People v. DeLong* (2002) 101 Cal.App.4th 482, 486.)

People v. Lindsey (1971) 20 Cal.App.3d 742 (*Lindsey*) is directly on point on this issue. In that case, the superior court determined after a hearing that a criminal defendant was insane and ordered him committed to a state hospital. The defendant appealed the order. During the pendency of the appeal, the defendant was certified as sane and criminal proceedings resumed. (*Id.* at p. 743.) *Lindsey* dismissed the defendant’s pending appeal of the original commitment as moot because “the superintendent’s

certification of sanity terminates the commitment, *leaving no prejudicial consequences* which could be ameliorated by a successful appeal.” (*Id.* at p. 744, italics added.)

Lindsey clearly controls the resolution of the instant case. In this case, as in *Lindsey*, the superior court found defendant was not competent to stand trial, and defendant filed an appeal from the court’s judgment on that issue. In the interim, defendant was apparently restored to competency, which has rendered the court’s initial finding moot.

Defendant raises several arguments in support of his opposition to the People’s motion to dismiss. First, defendant asserts this court should not dismiss the instant appeal because of the continuing stigma of a wrongful commitment. *Lindsey* rejected the identical argument.

“The certificate of [sanity] ... attests that defendant is no longer under ... a [mental] disability. *The law imposes no disadvantageous collateral consequences* upon one whose trial has had to be postponed by reason of such a temporary disability.... If defendant’s mental state is considered in future proceedings, the issue will turn upon what that state is found to be as of the relevant time, and not the fact that an order was made under ... section 1370 [in May 1971]. If any social opprobrium is thought to attach by reason of the commitment, that is nothing which is likely to be relieved by an appellate decision. The temporary commitment is nothing from which defendant needs to ‘clear his name.’ ” (*Lindsey, supra*, 20 Cal.App.3d at pp. 744-745, italics added.)

Defendant asserts this court should exercise its discretion to consider his appeal because the question of his competency could recur. This court may exercise its discretion to decide the issues raised in his appeal if they involve important issues of public interest that are capable of repetition yet evade review. (See, e.g., *People v. Cheek* (2001) 25 Cal.4th 894, 897-898; *Conservatorship v. Wendland* (2001) 26 Cal.4th 519, 524, fn. 1; *In re David H.* (2008) 165 Cal.App.4th 1626, 1634.) We decline to do so in this case, however, because defendant has not identified any issue of public interest that

this court should address in order to resolve the ongoing disputed issues between the parties. (See, e.g. *In re Michelle M.* (1992) 8 Cal.App.4th 326, 329.)

An argument similar to defendant's position in this case was addressed in *People v. Harris* (1993) 14 Cal.App.4th 984 (*Harris*), where the superior court found the defendant was not competent to stand trial. During the pendency of the defendant's appeal, he was found competent to stand trial and criminal proceedings were reinstated. (*Id.* at pp. 989-990.) *Harris* declined to dismiss the defendant's appeal because the defendant raised several issues that were of "sufficient public importance that it is appropriate to address them on the merits despite the fact that [the defendant's] commitment has expired. [Citation.]" (*Id.* at p. 990.) These issues included whether defense counsel, over the defendant's objections, could waive the defendant's right to a jury trial on the question of competency; whether counsel could waive the defendant's presence at the competency hearing itself; and whether the court was required to appoint two experts pursuant to section 1369, subdivision (a), an issue that had not been previously addressed by an appellate court. (*Harris, supra*, at pp. 990-996.)

While *Harris* addressed these issues on the merits, it declined to decide whether any of the superior court's errors would have required reversal of the defendant's commitment order. *Harris* concluded that "[n]o purpose would be served by vacating the expired commitment order" and ultimately affirmed the judgment. (*Harris, supra*, 14 Cal.App.4th at p. 996, fn. 5.)

In contrast to *Harris*, the issues raised in defendant's appeal do not involve disputed legal standards or questions likely to recur among other parties, but instead exclusively focused on whether the superior court's findings and orders – as to *this defendant* – were supported by substantial evidence.

Defendant further argues that this court may address his appeal based on the analysis set forth in *People v. Solorzano* (2005) 126 Cal.App.4th 1063 (*Solorzano*). However, *Solorzano* did not address whether an appeal from a commitment order should

be dismissed as moot if the defendant subsequently has been restored to competency. Instead, *Solorzano* dealt with a defendant's appeal after he had been convicted of multiple felony offenses and sentenced to four consecutive third strike terms. Prior to trial on the substantive charges, the superior court conducted a jury trial on the defendant's competency. The defendant repeatedly tried to make a *Marsden* motion during the competency trial, but the court "abrupt[ly]" refused to hear the motion, continued to conduct the competency trial, and found him competent. Later, a jury found him sane. (*Solorzano, supra*, at pp. 1066-1068.) In his appeal after conviction, the defendant argued that the superior court should have heard his *Marsden* motion during the competency hearing. *Solorzano* agreed, reversed the judgment of conviction, and ordered a new trial. *Solorzano* further ordered that if the question of the defendant's competency recurred, and if he again made a *Marsden* motion during competency proceedings, the superior court was required to promptly hear that motion before terminating the proceedings. (*Solorzano, supra*, at pp. 1071-1072.)

Solorzano does not support defendant's position in this case. While the defendant in *Solorzano* had been found competent to stand trial, his appeal was brought after the judgment of conviction and sentence on the underlying substantive offenses, and his convictions were reversed because the superior court's refusal to hear his *Marsden* motion violated his Sixth Amendment right to counsel. *Solorzano* never addressed whether the subsequent finding of competency rendered the defendant's appeal as moot, which is not surprising since the defendant's appeal was filed after his conviction and sentence. (*Solorzano, supra*, 126 Cal.App.4th at pp. 1069-1070.)

Finally, defendant argues this court should address his appellate issues because the superior court might again declare a doubt as to his competency and these same issues could recur. The instant appeal challenged the superior court's order of April 1, 2011, which committed defendant to Atascadero State Hospital based on the experts' findings and reports. Defendant was restored to competency and criminal proceedings were

resumed during the pendency of this appeal. If, at some future time, the superior court declares a doubt as to defendant's competency, suspends criminal proceedings, and commits defendant to Atascadero, defendant may seek appellate review of those new orders. At this point, however, there are no longer any justiciable controversies for this court to review, arising from the superior court's order of April 1, 2011.

We conclude subsequent events have rendered the present appeal moot. This case is not one where defendant may suffer future collateral disabilities as a result of the challenged ruling. The appropriate remedy is dismissal. (*Lindsey, supra*, 20 Cal.App.3d at p. 744.)

DISPOSITION

The People's motion for dismissal is granted. The appeal is dismissed as moot and the judgment is affirmed.

Poochigian, J.

WE CONCUR:

Wiseman, Acting P.J.

Franson, J.